



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH
1102 SE Quince Street • PO Box 47990
Olympia, Washington 98504-7990

July 1, 2002

Dear Interested Parties:

Enclosed for you review and comment is a discussion draft of possible revisions to State Board of Health rules governing communicable disease reporting, disease and contamination control measures, and the emergency powers of local health officers. The rule changes are not intended to create any new powers—rather, they are meant to:

- Modernize existing law to protect civil liberties during periods of isolation and quarantine;
- Consolidate in rule statutory requirements that law enforcement agencies enforce, and members of the public comply with, the orders of a local health officer and the rules of a state or local board of health.

Protecting the public health is recognized as one of the fundamental duties of local governments, and Washington law grants broad authority to local boards of health (RCW 70.05.060) and local health officers (RCW 70.05.070) to institute emergency control measures. It also requires that the public comply with the orders of boards of health and local health officers (RCW 70.05.120), and that law enforcement officers enforce all State Board of Health rules (RCW 43.20.050). The courts have repeatedly held that these public health statutes should be interpreted broadly.

In November 2001, the Board adopted *Response Capacity During a Public Health Emergency—A Review of Selected Issues*, a report that included among its recommendations: “The Board should initiate a review, in partnership with Department of Health, local health jurisdictions, and other affected parties, of the adequacy of current Board rules concerning reporting of notifiable conditions, isolation and quarantine, and the emergency powers of local health officers.” After adopting the report, the Board issued a Preproposal Statement of Inquiry (WSR 01-24-102) alerting the public of its intent to follow up on that recommendation.

In March, the Board convened a work group to discuss any gaps in existing statutes and administrative laws that might impair local response to a public health emergency, including a bioterrorism event or a major communicable disease outbreak. Participants included representatives from law enforcement, professional associations, local public health, state public health, prosecuting attorneys, and the Attorney General’s Office.

The two issues that emerged from that meeting as the areas of greatest and most immediate concern were the absence of clear procedures for isolation and quarantine and the need to ensure that law enforcement will enforce the orders of health officers. This finding was consistent with testimony before SBOH, critiques of state public health law in national law journals, the lessons learned from emergency planning exercises, and research by assistant attorneys general for the Board and the Department of Health. Other issues also came up at that meeting, but we decided to move ahead expeditiously on the first two concerns, which clearly could be addressed in rule by the Board, while continuing to discuss how best to address other issues.

RCW 43.20.050(2)(d) gives the Board specific statutory authority and responsibility to “[a]dopt rules for the imposition and use of isolation and quarantine.” State statutes and Board rules contain rules for involuntary detention (e.g., mandatory isolation or involuntary commitment) for specific conditions and health-related situations, including HIV/AIDS, tuberculosis, sexually transmitted diseases, mental illness, substance abuse, and child abuse. All of these lay out procedures to be followed to protect due process. There are, however, no statutes or rules in Washington that establish procedures for isolation and quarantine and are not condition-specific.

In brief, the rule changes postulated in this discussion draft would:

- Add new sections to chapter 246-100 WAC, Communicable and Certain Other Diseases to establish due process procedures for isolation and quarantine.
- Add a new section to chapter 246-100 WAC referencing existing statutory legal authority and requirements to enforce the orders of a local health officer.
- Edit existing sections of chapter 246-100 WAC and chapter 246-101 WAC, Notifiable Conditions to remove specific mention of instituting isolation, quarantine, and other disease control measure, and replacing them with a reference the provision of the new sections in chapter 246-100 WAC.
- Additions and revisions to the definitions section of chapter 246-100 WAC to support the new provisions.

In drafting the new material, the Board borrowed heavily from existing Board rules and state statutes governing involuntary detention and due process. It also borrowed from the disease control and bioterrorism statutes in other states, and from the Dec. 21, 2000 draft of the Model Emergency Health Powers Act.

Several attachments are included with this packet of materials. Attachment A is the discussion draft. Attachment B is a brief summary and flow chart of how the draft procedures are intended to work should isolation or quarantine becomes necessary. Attachment C is a summary of some additional issues related to public health authority in the event of a health emergency that have been mentioned as areas of concern but, for a variety of reasons, are not addressed in this discussion draft.

July 1, 2002

Page 3 of 3

Please keep in mind when reviewing this material that the Board recognizes that our ability to respond successfully to a health emergency will depend on all first responders being able to work together, to understand one another's roles, and to communicate effectively. Rules and regulations can never substitute for relationships. It is my hope that putting effective procedures into rule will allow us to debate and decide on a fair and effective process before emergency measures become necessary. This rule making process is intended to strengthen relationships, not supplant them, by providing a common understanding, across agencies and jurisdictions, of our various responsibilities and authorities. And it will give us a standard to train to and establish a process that can be tested and drilled during emergency preparedness exercises.

Please submit any comments on the attached discussion draft by July 19 in care of:

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Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Locke", with a stylized flourish at the end.

Thomas Locke, MD, MPH
Member, Washington State Board of Health

Enclosures (3)